is because they are pleadings as defined by Order 71 rule 1(10) and because the last sentence in Order 19 rule 4 provides:

"Pleadings shall be signed by the solicitor, or by the party if he sues or defends in person."

But I do not agree that amendments to the statement of claim made in the circumstances of this case should have also been signed.

It is true that *prima facie* pleadings are defined by Order 71 rule 1(10) to include statements of claims such as the one in this case, but it should be noted that the definition applies only where there is nothing in the subject or context repugnant to it, and I think that there is something in the context of Order 28 (which deals specifically with amendments) which is repugnant to the application of the definition to the circumstances of this particular case. The amendments were in exact terms of the order granting leave to amend, and they were also vouched for by the seal of the court; furthermore, the plaintiff has complied with rules 8, 9 and 10. The original statement of claim bore the plaintiff's solicitor's signature, the amended statement bore only his solicitor's name, but in my view the absence of his solicitor's signature is only an irregularity. I am fortified in my view by the fact that amendments in the course of a trial may be made with less formality than has been observed here.

Secondly, the unimportance in practice of this omission by the plaintiff's solicitor signing the amended statement of claim is borne out by the fact that the defendant did not object to its validity until nearly three years later, after he had himself filed and served his amended defence. Order 70 rule 2 says that no application to set aside any proceeding for irregularity shall be allowed unless made within a reasonable time, nor if the party has taken any fresh step after knowledge of the irregularity. The learned judge was therefore right to dismiss the defendant's application.

Ali F.J. concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Allen, Gledhill & Ball.*

KONG CHENG WHUM v. TENGKU BESAR ZABAIDAH

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) November 28, 1969]

[Kuala Trengganu — Federal Court Civil Appeal No. X-45 of 1969]

Landlord and Tenant — Rent — Excess payment — Claim for recovery — Expiry of statute — Effect of — Increase of rent with consent of tenant — No necessity to give notice to end previous tenancy — Control of Rent Ordinance, 1956.

Legislation — Expiry of statute — Effect of — Interpretation and General Clauses Ordinance, 1948, s. 15.

This was an appeal against the decision of Syed Othman J. ([1969] 2 M.L.J. 224) dismissing the counterclaim of the appellant for rents alleged to be paid in excess. The learned trial judge held: (a) the claim for the excess paid while the 1956 Control of Rent Ordinance was in force in Kelantan i.e. until June 30, 1964, could not succeed as that statute had been allowed to expire; (b) the claim for the excess paid after July 1, 1964 also could not succeed because the parties had mutually agreed to the payment of the rent of $120.

Held, dismissing the appeal: (1) (Ali F.J. dissenting) the learned trial judge was correct in holding that as the Control of Rent Ordinance, 1956, had expired, no proceedings could be instituted to recover any rent paid in excess after the expiry of that Ordinance;

(2) the learned trial judge was correct in holding that the rent paid after July 1, 1964 was not excessive because the parties had mutually agreed to this rent and (i) there was no control in force until December 31, 1964 and (ii) after July 1, 1965 that increased rent was the "standard rent" when the Control of Rent Ordinance was revived;

(3) it was not necessary for the landlord first to give notice to terminate the tenancy before increasing the rent as the tenant had agreed to this increase of rent.

Cases referred to:-

(1) *Surtees* v. *Ellison* (1829), 9 B. & C. 750, 752.

(2) *Kay* v. *Goodwin* (1830), 6 Bing. 576.

(3) *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362, 366.

(4) *Fenner* v. *Blake* [1900] 1 Q.B. 426, 428.

(5) *Inchiquin (Lord)* v. *Lyons* (1887) 20 L.R. (I.) 474.

(6) *Che Esah & Anor.* v. *Che Limah* [1966] 1 M.L.J. 36.

The following cases were also cited in argument: *Ho Choon Chee* v. *Leong Yee Sin* [1964] M.L.J. 44; *Edgware Estates Ltd.* v. *Coblentz* [1949] 2 K.B. 717; [1949] 2 All E.R. 527, 531; *Ng Chik Puah* v. *Chop Hoe Thong* [1962] M.L.J. 349; *Devraj Nahar & Ors.* v. *Gian Singh & Co.* [1963] M.L.J. 173; 174; *Arunachalam Chettiar* v. *Kow Guan* [1963] M.L.J. 253, 255.

FEDERAL COURT.

H. L. Wrigglesworth for the appellant.

Raja Abdul Aziz bin Addruse for the respondent.

Cur. Adv. Vult.

Azmi L.P.: This is an appeal against the judgment of the High Court at Kota Bharu, Kelantan.

The landlord, who happens to be a lady, and the respondent in this appeal, originally claimed against the tenant for the recovery of certain premises known as No. 2725 Jalan Tok Hakim, in the local authority area of Kota Bharu.

The tenant denied the claim and at the same time counter-claimed for the return of $11,455 which he alleged he had paid to the landlord in excess of the lawfully permitted rent. The premises were subject to the control of rent law. The landlord denied the counter-claim and also pleaded the Limitation Ordinance in reference to the alleged over-payment of rent paid during the period between 21st January 1947 and 20th January 1959.

The landlord subsequently withdrew her claim for possession of the said premises and the court below proceeded to hear the tenant's counter-claim but on the tenant conceding to the defence of limitation, proceeded to do so only in reference to the counter-claim for the over-payment between 21st January 1959 and 21st January 1965.

The learned judge dismissed the tenant's counter-claim purely on a question of law.

To understand his reasoning it is necessary to know the state of legislation in reference to control of rent covering the period of the alleged over-payment. The provisions of the Control of Rent Ordinance 1956, after their introduction in 1956 had effect only for twelve months from 1st July 1956. The Ruler-in-Council in a State was empowered to apply the law to any local authority area in its State and if it so wished extend its application periodically. In other words, unless so further extended the application of the said law would expire at the end of each period.

The Ordinance was applied to the local authority of Kota Bharu by the Ruler-in-Council in the State of Kelantan and its application renewed periodically until the end of June 1964. It was however, brought into force again not by the Ruler-in-Council but by a State law passed by the Kelantan State Legislature, entitled The Control of Rent (Application to Kelantan) Enactment 1964, (Enactment No. 17 of 1964), with certain modifications and with effect from 1st January 1965. The said Enactment No. 17/64 was subsequently amended by another State law of Kelantan No. 6 of 1965 with retrospective effect from 1st January 1965.

These two State Enactments read together, among other things, substituted, for the definition of the word "standard" in the Ordinance, the following new definition:

"'Standard rent' means the rent at which the tenant had paid or had agreed to pay to the landlord on 30th June 1964, or in the case of premises which were then un-let, un-occupied or un-built, the rent at which the premises were first let after 30th June 1964."

and for section 6 of the Ordinance, the following new section 6:

"6. (1) The maximum recoverable rent of any premises shall be:

(a) Where the rent has been fixed by order of the Board, the rent so fixed:

Provided that if at any time subsequent to the making of any order fixing the rent, the rates payable by the landlord in respect of the premises have been increased, the rent may be increased above the rent so fixed to the extent of such increase or

(b) where there has been no order of the Board fixing the rent of the premises, the Standard Rent may be increased by not more than 100% of the Standard Rent.

(2) In assessing the maximum recoverable rent, regard shall be had to the following:

(i) The condition and type of the particular premises concerned.

(ii) The locality in which the premises concerned are situated.

(3) Nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law prior to increasing the rent.

(4) Nothing in this section shall apply to any tenancy arising from the subletting of part of any premises."

The learned judge held that the counter-claim for the period 1st January 1959 to 30th June 1964 could not stand as it was based on a defunct law since the Control of Rent Ordinance had expired on 30th June 1964. In support of his contention he referred to section 15 of the Interpretation and General Clauses Ordinance 1948 which deals with the effect of the expiration of a written law. I will hereafter refer to this Ordinance as the Interpretation Ordinance 1948.

He then cited passages in the judgment of Lord Tenterden in *Surtees* v. *Ellison*,[1] and of Tindal C.J. in *Kay* v. *Goodwin*[2] as to the effect of the repeal of an Act of Parliament before the passing of section 38 of the English Interpretation Act 1889.

The Control of Rent Ordinance and the two Kelantan State laws to which I have referred, are in my opinion, temporary laws which expire automatically at the end of a period of time unless revived and to this kind of law I think section 15 of the Interpretation Ordinance 1948 would apply.

Before I go further I would first deal with counsel's argument before us as to whether the provisions of the 1948 Ordinance or the new Interpretation Act of 1967 should be applied to the present case. In my opinion, the 1948 Interpretation Ordinance applies and not the Interpretation Act of 1967 for the simple reason that section 2 of the Interpretation Act 1967 (to which hereafter I shall refer to as "the said Act") specially provides that the said Act shall apply for the interpretation of the said Act itself and to Acts enacted after the commencement of the said Act and all the laws whether enacted before or after the commencement of the said Act revised under the Revision of Laws Act 1968.

The Interpretation Ordinance 1948 was certainly enacted before the passing of the said Act. There is again section 65 of the said Act to be considered. That section provides that notwithstanding the repeal of the Interpretation Ordinance 1948, the provisions of the said Ordinance shall continue to apply to any written law to which it applied immediately before the commencement of the said Act. The said Act came into force on 30th September 1967.

Having thus come to the view that the Interpretation Ordinance would apply to this case I would now consider its relevant provisions. Section 13 of the Interpretation Ordinance deals with the effect of the repeal of a written law, whereas section 15 deals with the effect of the expiration of a written law. That there is a difference in the two is clearly confirmed in the judgment of Viscount Simon in the House of Lords case of *Wicks* v. *Director of Public Prosecutions*[3] where he stated:

"It is pointed out that section 38 of the Interpretation Act, 1889, does not apply to the case of a statute or regulation which has the power of a statute, when it expires by effluxion of time. The section in the Interpretation Act is addressed to Acts which have been repealed, and not to Acts which expire owing to their purely temporary validity. It is, I apprehend, with this distinction in mind, which is quite well-known, and certainly quite well-known to the authorities who frame statutes, that the draftsman inserted the words used in section 11."

Section 38 of the English Interpretation Act 1889, referred to by His Lordship is substantially similar to section 13 of our Interpretation Ordinance. Section 15 provides as follows:—

"15. The expiration of a written law shall not affect any civil or criminal proceedings previously commenced under

such written law, but every such proceeding may be continued and anything in relation thereto may be done in all respects as if the written law continued in force."

In other words, no civil or criminal proceeding may be brought under a written law that has expired unless such proceedings had previously been commenced under such written law while it was still in force. I think that is what the learned trial judge meant when he said the claim for over-payment occurring before 30th June 1964 could not be maintained because it was based on a defunct law. In my view, with respect, the learned judge was right.

It would have been a different matter if it was a case of a law that had been repealed because section 13 would apply. That section appears to preserve any right, privilege, obligation or liability acquired, accrued or incurred under any written law that has been repealed unless of course, contrary intention appears in the repealing law.

In reference to the second question posed by the learned judge namely as to whether there is any right to claims for over-payment during the period 1st July 1964 to 31st December 1964 when the Control of Rent legislation lapsed, the learned judge came to the view that in the circumstances, the general law of contract would apply and since the evidence according to him appears to have shown that the tenant had agreed to pay the rent for the premises at $120 a month, which he did for the period in question, the question of over-payment therefore did not arise.

It was argued on behalf of the appellant that the learned judge in deciding this question as he has done, had overlooked the tenant's agreement to pay the rent at $120 p.m. was made in February 1964 when the Control of Rent Ordinance was still in force in Kelantan and thereby rendering such agreement null and void as it contravened the provisions of section 6 of the Ordinance and there was no evidence of any subsequent agreement being made by the tenant before the 31st December 1964. It could be as counsel had stated that the payment of $120 a month in reference to the period from February to the end of June 1964 was contrary to the provisions of the Ordinance but as I have explained previously the tenant cannot now claim for any such overpayment because the law had expired and he had not filed his claim before the date of expiration.

The next question he considered is as to the alleged over-payment after 1st January 1965. The learned Judge as I understand him said the rent of $120 was the rent paid by the tenant on 30th June 1965 and therefore was within the definition of the word "standard rent". It will be remembered that "standard rent" is defined by the State Enactment in re-enacting the provisions of the Control of Rent Ordinance as "rent at which the tenant had paid or had agreed to pay to the landlord on 30th June 1964". Therefore in my view the learned judge was right in coming to the conclusion he did.

In the absence of anything in the way of fraud, or misrepresentation or mistake, we must assume that there was a complete agreement on the part of both parties as to the payment of $120 rent for this period.

There is another point which I think I should deal with. That is to the allegation that there was no determination of the old lease before the rent was increased. On this point the learned judge cited the judgment of Channell J. in *Fenner* v. *Blake*[4] and of Morris C.J. in *Inchiquin (Lord)* v. *Lyons*.[5] Chief Justice Morris in the latter case stated:

"I am not aware of any case deciding, as an abstract proposition, that in no case can a landlord and tenant agree to raise the rent without creating a new tenancy. That would lead to extraordinary consequences. More generally there is a reduction of rent; and suppose a reduction is made to a tenant, and arrangement that he is to hold on at the reduced rate, and that such reduced rate is to relate back to a previous period, would that create a new tenancy? I presume that if an arrangement to increase the rent would *ipso facto* create a new tenancy an agreement for a reduction would have the same effect. The consequences of that are, at all events, worthy of consideration. I am not aware that such a proposition has ever been decided, and I think it is contrary to the ordinary right that two persons are to be prevented from entering into an agreement, which is not immoral or against public policy, *viz.*, that the rent is to be increased or diminished, without putting an end to the old tenancy."

The learned judge thereupon held that the evidence in this case showed that the tenant himself agreed to the increase of the rent during the continuance of the tenancy and there was nothing to show that as regards the tenancy the general law of contract required that it should be determined before the rent can be increased.

It would appear from the above that there would be no necessity of determining a tenancy and creating a new tenancy before rent is increased where there is a mutual agreement to the increase of rent and that therefore determination of the old tenancy appears necessary only where the tenant had refused to an increase of the rent and in the circumstances it would be necessary for the landlord to determine the tenancy by notice, which of course would entail the necessity of creating a new tenancy and new terms in reference to rent.

In the circumstances, the appeal fails.

The appeal is therefore dismissed with costs and the deposit of $500 will be paid to the respondent on account of her taxed costs.

Suffian F.J.: With respect I agree that this counterclaim by the tenant (appellant) be dismissed.

The counter-claim was in respect of rent paid allegedly in excess during the period from 21st January, 1959, until 21st January, 1965.

The question is: can the tenant recover the excess? I think that it is convenient to divide the excess rent paid into three parts —

(a) excess paid while the 1956 Rent Control Ordinance was still in force, i.e., until 30th June, 1964;

(b) excess paid when there was no rent control in Kelantan, i.e., from 1st July until 31st December, 1964; and

(c) excess paid after the 1956 Ordinance had been revived, i.e., from 1st January, 1965, onwards.

From 21st January, 1959, until 30th June, 1964, the building in question was subject to rent control imposed by the 1956 Rent Control Ordinance. On that date it ceased to be subject to rent control, not because the Ordinance had been repealed, but simply because it was allowed to expire. Then the Kelantan legislature revived the 1956 Ordinance with amendments with effect from 1st January, 1965.

For the interpretation of the 1956 Ordinance the 1948 Interpretation Ordinance applies, and that Ordinance draws a distinction between repeal of statutes and expiry of statutes. Section 13 (dealing with repeal) expressly provides that where a statute repeals another, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute or affect any legal proceeding or remedy in respect of any such right, etc., and any such proceeding or remedy may be instituted, continued or enforced, as if the repealing law had not been passed. There is no corresponding provision in section 15 which deals with the effect of the expiration of a statute. The exact words of that section have already been given by my Lord President, and there is no need for me to repeat them. In the absence of such provision, I am of the opinion that if the tenant in the instant case had a right under the 1956 Ordinance to recover when the Ordinance was in force rent paid in excess, he cannot institute proceedings to recover it after the expiry of that Ordinance. He can recover it after the expiry of that Ordinance only in proceedings instituted before such expiry. He did not institute these proceedings until 18th February, 1965, when the Ordinance had expired.

During the period when there was no rent control law in force, i.e., from 1st July until 31st December, 1964, the tenant voluntarily paid rent at $120 p.m. With respect I agree that he cannot recover any excess payment made during this period either, because there being no restriction on rent then, there is therefore no question of any rent voluntarily paid by the tenant being excessive. I do not think that the fact that the tenant first agreed to have the rent increased to that amount in February 1964 when the 1956 Ordinance was still in force made any difference. If that amount was excessive under the Ordinance the excess paid until 30th June cannot be recovered by a counterclaim instituted after that date.

What about the rent paid after 1st January, 1965, when the 1956 Ordinance had been revived? Thereafter the maximum rent that the landlord may recover is, by virtue of the new definition of standard rent, the rent which the tenant had paid or agreed to pay on 30th June, 1964. That rent was $120 p.m. Therefore none of the rent paid after 1st January, 1965, is excessive and recoverable.

For the reasons given by my Lord President I agree that it was unnecessary for the landlord first to give notice to terminate the tenancy before increasing the rent in February 1964 to $120. Such notice would have been necessary only if the tenant had refused to agree the new rent, which was not the case here.

I would accordingly dismiss this appeal.

Ali F.J.: This appeal arose out of an action in which the respondent claimed recovery of possession of a premises in Kota Bharu, Kelantan. The appellant, as tenant, resisted the claim and at the same time counter-claimed for excess rent. At the trial the respondent did not pursue her claim for possession and consequently the dispute turned mainly on the counter-claim. Although at first the counter-claim was in respect of the period from the commencement of the tenancy up to the date of the action, i.e. the 19th or 21st January, 1965, this was reduced to six years so as to bring the counter-claim within the period of limitation.

The right to recover excess rents is a right conferred by statute which restricts the landlord's right to charge rent up to the maximum recoverable rent. Beginning from 1948 legislations on rent control took the form of the Control of Rent Ordinance 1948, as amended from time to time. This Ordinance was later repealed and replaced by the Control of Rent Ordinance, 1956 which came into force on the 1st July, 1956. A substantial amount of the excess rents claimed by the appellant appeared to have been paid during the currency of this Ordinance in Kelantan. Section 3(4) of the Ordinance provides:

"A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

It was common ground that this Ordinance was in force in the State of Kelantan since its commencement up to the end of June, 1964. For six months thereafter the State of Kelantan did not provide for its continuance or extension or applicability to the State as had been done previously. But as from the 1st January, 1965 by the Control of Rent (Application to Kelantan) Enactment 1964 the Ordinance was again brought into force in Kelantan with certain modifications. Section 2(1) of that Enactment provides:

"Notwithstanding anything to the contrary contained therein, the Control of Rent Ordinance, 1956 of the Federation as amended from time to time shall appiy and have effect in the State of Kelantan with the modifications mentioned in sub-section (2) of this section."

As I read it the effect of this provision is to apply or bring into effect to or in the State of Kelantan *in toto* the provision of the 1956 Ordinance so far as these are not affected by the modifications. These modifications, as they appear to me, provide for a new basis for assessing "Standard Rent" and "Maximum Recoverable Rent" which obviously could only take effect from the 1st January, 1965. It has been suggested at the hearing of this appeal that this 1964 Enactment was a fresh legislation in the sense that it provided a completely new law relating to rent control in the State. I am unable to agree with this in view of the words "shall apply and have effect" used in section 2(1) of the Enactment already referred to. Different words would have been used if the intention was to "divorce" — to borrow the expression used by the learned trial judge in his judgment — the provisions of the Ordinance from the provisions of the State Enactment. It is not uncommon to find in a particular statute words which have the effect of incorporating provisions of other statutes as provisions of that particular statute.

Here the words in section 1(1) of the 1956 Ordinance "shall have effect" have been used by the draftsman for section 2(1) of the Enactment. The clear intention, therefore, was that the 1956 Ordinance was to apply and take effect in Kelantan in the same way as it had applied previously up to the end of June, 1964.

Having thus set out the state of rent control legislations in Kelantan, I shall now turn to the arguments. The appellant's counsel has submitted that he relied on section 8(3) of the Control of Rent Act 1966 for the appellant's right to make this claim in respect of excess rents. This Act was not in existence during the period the excess rents were paid or at the time when the writ in this action was issued. It was brought into force on the 1st July, 1967 and the trial was held in April, 1968. Section 8(3) reads as follows:

"A tenant who has paid his landlord a sum in excess of the fair rent or the rent which may lawfully be received under the provisions of this Act may recover such sum from the landlord."

In relying on this sub-section, the appellant sought support from the decision in *Che Esah & Anor.* v. *Che Limah*[6] as laying down the proposition that the law in force at the date of the trial applies to the dispute before the court regardless of whether the dispute is founded on transactions occurring even before that law has come into existence. In the case cited Barakbah C.J. (as he then was) dealing with the failure on the part of the landlord to serve a notice on the legal representative of the deceased tenant said at page 37:

"...In my view, therefore, as the law applicable was the law as it existed at the date of the hearing, and as the tenancy was then protected by the provisions of the Control of Rent Ordinance 1956, no order for possession could be made"

This view was apparently influenced by a passage from *Megarry* on the Rent Act 9th Edition, page 224, which is this:

"Although the landlord's claim to possession at common law must be complete when the proceedings are commenced, the circumstances relevant to his claim to possession under the Acts, both as to the reasonableness and, in general, the specific heads, are those existing not when proceedings are commenced but at the date of the hearing by the court of trial, and not the Court of Appeal."

With respect, I am unable to find anything from the words of the judgment already referred to as laying down the proposition of law suggested by the appellant's counsel. I agree with the learned trial judge that section 8(3) of the 1966 Act cannot be relied upon by the appellant.

In view of the state of legislation in Kelantan, the learned trial judge posed three questions for consideration and they are:

"(a) whether a claim for overpayment of rent lies after the expiration of a written law;

(b) whether there is any right to a claim for overpayment during the period in which the general law of contract applied; and

(c) the rights of the tenant after the revival of the Control of Rent Ordinance, 1956, as modified by the State Enactments."

So far as these questions are relevant to the appellant's counter-claim, it will be convenient to divide the period during which excess rents were alleged to have been paid in order to consider the effect of this legislation. Before I do this it is necessary to mention that there was no dispute as to the fact that rents had been increased from time to time up to $120 per month. It was not also in dispute that these increases have been mutually agreed upon by the parties.

The first period relates to excess rents paid up to the end of June, 1964 when the Control of Rent Ordinance 1956 was undoubtedly in force in Kelantan. The second period relates to the payment of rent for six months during which period that Ordinance was not in force in Kelantan. The third period relates to the payment of rent from the 1st January, 1965 up to the date of the action, when the 1956 Ordinance was re-applied to Kelantan by the State Enactment 1964. On question (a), the learned trial judge held that section 15 of the General Clauses and Interpretation Ordinance 1948 implies that no action can be brought to claim any right conferred by any law after the expiration of that law. In so holding the learned trial judge was clearly distinguishing the meaning of the word "expiration" from the word "repeal" which is used in section 13 of the General Clauses and Interpretation Ordinance 1948. In support of the view the learned trial judge, however, referred to two cases, *Surtees* v. *Ellison*[1] and *Kay* v. *Goodwin*[2] which incidentally were concerned with "repeal" and not with "expiration". Nonetheless it became apparent at the hearing of this appeal that such a distinction was recognised in *Wicks* v. *Director of Public Prosecution*[3] in which Viscount Simon said at page 366:

"It is pointed out that section 38 of the Interpretation Act, 1889, does not apply to the case of a statute, or a regulation which has the power of a statute, when it expires by effluxion of time. The section in the Interpretation Act is addressed to Acts which have been repealed, and not to Acts which expire owing to their purely temporary validity. It is, I apprehend, with this distinction in mind, which is quite well-known, and certainly quite well-known to the authorities who frame statutes, that the draftsman inserted the words used in section 11."

Up to a point I am prepared to say that the learned trial judge was right in the view that, on the expiration of the Control of Rent Ordinance 1956, after the 30th June, 1964 no action could be brought by the appellant to recover excess rents. But as earlier stated the 1956 Ordinance was re-applied with some modifications to the State of Kelantan and this means that that Ordinance did not expire "permanently". This was indeed peculiar and the learned trial judge did not fail to appreciate it. Anything which expires or dies ordinarily remains dead. But if something is done to bring it back to life or, to use the learned trial judge's expression, to revive it, then surely everything that went to the grave with it must also come back to life. The learned trial Judge, however, did not think so when he said in his judgment:

"As regards (c), the revival of the Control of Rent Ordinance, 1956, with amendments as applied by the Legislature of the State of Kelantan with effect from 1st January, 1965, gave the law an entirely new complexion. Having regard to the new definition of 'standard rent' in my view it was clearly the intention of the State Legislature to divorce the effect of the new provision from that of the provisions under the Control of Rent Ordinance, 1956, as they stood before the revival..."

As regards the second and third periods mentioned earlier, I have no doubt that the learned trial judge was right in concluding that no question of overpayment arose to entitle the appellant to claim excess rents. But as regards the first period, i.e. some five years up to the 30th June, 1964, the appellant had definitely acquired the right to recover excess rents for the 1956 Ordinance was then in force in Kelantan. He could have enforced this acquired right by action but he did not do so. This cannot be held against him because under the Limitation Ordinance he has six years to bring his claim. He could not have known that the 1956 Ordinance was not to be continued in Kelantan from July, 1964. But when the 1956 Ordinance was again brought into force in Kelantan in the way it was brought into force by the State Enactment 1964 there was no reason for saying that it was the intention of the State Legislature that he could not again take proceedings to enforce his right. What was affected by the modifications was the assessment of standard rent and maximum recoverable rent and section 6 of the 1956 Ordinance. This could only affect the future beginning from the 1st January, 1965 and there was nothing in these modifications that could lead me to think that they were intended to affect the past. Section 3 of the 1956 Ordinance, particularly sub-section (1) and sub-section (4) thereof remain unaffected so far as these relate to past transactions. If I may put it in a different way, in the absence of express words to the contrary, the re-application of the Control of Rent Ordinance 1956 must have the effect of enabling the appellant to pursue his right to claim excess rents for the period up to 30th June, 1964. To that extent the counter-claim must succeed. As to the amount involved, this can be arrived at without difficulty having regard to the actual rent paid. Although there was some difference of opinion as to the basis for calculating the excess rents, I feel sure these can be resolved by agreement between the parties. In the event such an agreement cannot be arrived at, the matter will have to be referred to the Assistant Registrar for an inquiry which I hope will not be necessary.

I would allow this appeal to the extent above stated and award the appellant only half the costs here and below.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Rithauddeen & Aziz.*